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SUBJECT: TOGO - 2009 INVESTMENT CLIMATE STATEMENT

REF: 08 STATE 123907

¶1. The following is Togo's 2009 Investment Climate Statement as requested in reftel:

OPENNESS TO FOREIGN INVESTMENT

¶2. Togo has traditionally provided a hospitable environment for foreign investment. However, political instability has diminished both opportunities and investor confidence. The government distinguished itself through the 1980's as a western-oriented, entrepreneurial hub in the region. However, in the early 1990's, investor interest fell sharply due to overt political unrest in Togo. As the country emerges from the negative economic impact of that period and its poor political and human rights record, foreign investment is even more welcome than it was previously. The government continues to seek high-profile fora in which to promote its investment opportunities, particularly in the free trade zone.

¶3. Following years of political stalemate and economic stagnation, important progress was achieved in 2007 and the latter half of 2006 toward a return to stability and dialogue. Free and fair legislative elections in October 2007 were followed by the formation of a new government in December 2007. Many challenges remain for improving the climate for private sector activity, particularly in such areas as administrative and judicial transparency, and banking. International donor programs are supporting these efforts; the European Union pledged financial support for Togo after the legislative elections. The World Bank and the African Development Bank both forgave Togo's arrears in 2008, and it was determined that Togo now qualifies for Heavily Indebted Poor Country (HIPC) debt relief.

¶4. The current investment code was enacted in April 1990. The code and related regulations were designed to encourage foreign investment, and they are a marked improvement over the previous code. Foreign investment could be an important element in achieving the government's goals of diversification from traditional exports (agricultural cash crops, phosphates), and in suspended privatization programs (phosphates, telecommunications, tourism, and cotton).

¶5. It is anticipated that the investment code will be further improved in the short- to medium-term. Revisions have already been made, particularly with regard to incentives. As a member of the West African Economic and Monetary Union (WAEMU), Togo is participating in zone-wide plans to harmonize and rationalize regulations governing economic activity within OHADA (Organization for the Harmonization of Commercial Law in Africa), which includes the 14 CFA zone countries and the Comoros and Guinea. A common charter on investment is one of the projected elements of that effort. The resulting national investment code will be greatly simplified and is expected to be limited to general dispositions related to non-discrimination, guarantees, and arbitration.

¶6. The 1990 code permits investment in the following sectors: (a) agriculture, animal husbandry, fishing, forestry, and activities related to the transformation of vegetable and animal products; (b) manufacturing; (c) exploration, extraction, and conversion of minerals; (d) low-cost housing; (e) hotels and tourist infrastructure; (f) agricultural storage; (g) applied research

laboratories; and (h) socio-cultural activities. Investment under the code is limited to new investments of at least FCFA 25 million (about \$50,000) for foreign companies and FCFA five million (about \$10,000) for Togolese companies. The Togolese corporation charter covers investments of less than FCFA five million. The investment code covers the expansion of existing enterprises if the cost of the expansion is at least half the value of the existing enterprise. Investors must provide at least 25 percent of the value of a new investment. At least 60 percent of the payroll must go to Togolese citizens. Applications for approval under the law must be submitted to the planning ministry, which, in consultation with the national investment commission, approves or rejects the applications within 30 days. The approval can take as little as 14 days to obtain. The government decree granting approval spells out the conditions of the investment.

CONVERSION AND TRANSFER POLICIES

17. Togo uses the CFA franc (FCFA), which is the common currency of most of the Francophone countries of West Africa. The FCFA is fixed at a rate of FCFA 656 to 1 Euro. The exchange system is free of restrictions for payments and transfers for international transactions. The investment code provides for the free transfer of revenues derived from investments, including the liquidation of investments, by non-residents. There are no restrictions on the transfer of funds to other West African franc zone countries or to France. The transfer of more than FCFA 500,000 (about \$1000) outside the franc zone requires Finance Ministry approval. Approvals are routinely granted for foreign companies and individuals; the law stipulates that the process should be completed in two days, but delays are not uncommon. Togolese citizens and companies are not generally allowed to hold bank accounts outside of the franc zone. With its WAEMU partners, Togo is examining removing the remaining restrictions on capital transfers. Financial transactions within the franc zone can be more complicated than might be expected, due to country-specific administrative obstacles to inter-country banking activities.

EXPROPRIATION AND COMPENSATION

18. The only expropriation of property in Togo was the 1974 nationalization of the French-owned phosphate mine. The government paid sufficient compensation.

DISPUTE SETTLEMENT

19. The investment code provides for the resolution of investment disputes involving foreigners through one of several means: (a) the provisions of bilateral agreements between the government of Togo and the investor's government; (b) arbitration procedures agreed to between the interested parties; or (c) through the offices of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, of which Togo became a member in 1967. Togo has adopted and implemented regional business legislation through the Organization for the Harmonization in Africa of Commercial Law (OHADA); while its enforcement is limited by the weak legal and judicial systems, the government is currently implementing a justice modernization project to improve transparency. Lack of transparency and predictability of the judiciary is a serious obstacle to enforcing property and judgment rights, and similar difficulties apply to administrative procedures.

110. There are no current bilateral trade policy disputes between Togo and the United States. The government accepts international arbitration of investment disputes.

PERFORMANCE REQUIREMENTS/INCENTIVES

111. The various tax advantages that were previously bestowed under both special conventions and the 1990 investment code were eliminated. A 1995 finance law terminated all incentives that had been maintained beyond their legal duration. Remaining regulations granting incentives will not be renewed, and no new exceptions will be granted. To the extent that some incentives are retained, they are expected to occur within the tax code and address depreciation, treatment of losses, taxation of capital goods, and relief on intermediate inputs for exports goods.

¶12. Togo has adopted the WAEMU policy framework, including the common external tariff. This has led to a low average external tariff and to the absence of significant non-tariff barriers and major export restrictions.

¶13. Price control and profit margin regulations have been largely eliminated in the only sectors still subject to administrative price controls: electricity, water, and telecommunications. Private competition in telecommunications was introduced in 1999, allowing better market-oriented pricing in that area.

¶14. While the steps for receiving residence permits are in theory well-defined, in practice foreigners seeking to legalize their status for long-term work and residence purposes have encountered significant administrative obstacles and delays. Issuance of such permits is the responsibility of the national police.

RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

¶15. The Chamber of Commerce recently implemented a new system for business registration. The entire process has been streamlined into one office. While delays still occur due to the need for several ministries to approve the application, the process has been simplified and is more efficient than in the past.

¶16. The government of Togo is under pressure from the international banking community to privatize parastatal enterprises, but thus far little progress has been made.

PROTECTION OF PROPERTY RIGHTS

¶17. Togo is a member of the World Intellectual Property Organization and the Cameroon-based African Intellectual Property Organization. For specific information on IPR matters, please contact BP 831, Lome, Togo; Tel (228) 222-10-08; Fax: (228) 222-44-70. Protection of physical property is frequently contentious in Togo, as inheritance laws are poorly defined and property transmission outcomes are frequently challenged. Only Togolese citizens or those granted citizenship by court decision, French citizens, or foreign governments are allowed to possess real property in Togo. Real and chattel property disputes are further complicated by judicial non-transparency, which will often favor national over foreign entities.

TRANSPARENCY OF THE REGULATORY SYSTEM

¶18. Lack of judicial and regulatory transparency is a significant obstacle to business development. Togo needs to implement a large-scale overhaul of the legal and regulatory framework to address these shortcomings. Measures include regional initiatives regarding business and investment law, such as the common WAEMU investment charter mentioned above. The common business law treaty (OHADA), which entered into force on 1 January 1998, should theoretically reduce judicial uncertainty across the region; however, in actual practice it will only function well after an overhaul of the national judicial system. In December 2006, the government passed a revised labor code that provides for improved treatment of workers. The new code also forbids the worst forms of child labor and prohibits discrimination against women, disabled persons, and those with HIV/AIDS. A new Child Code was passed in July 2007 which further protects the rights of children.

¶19. Togo made a great deal of progress in 1997 with plans to rationalize the tax system and its administration, bringing about both simplification and revenue enhancement. The value-added tax has been unified at 18 percent (as opposed to the previous two-rate structure of 7 percent and 18 percent). The World Bank continues to encourage revisions to the tax code.

¶20. New Customs administrative processes entered in effect on January 1, 2008 and will significantly improve import and export procedures and will establish more transparency. The new process includes an online one-stop clearing system.

EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

¶21. Togo's political upheavals have severely weakened the banking system. While there was some improvement beginning in 1995-1996,

particularly among the smaller banks, Togo still has not regained its previous reputation or position as a regional banking center. The larger banks, which are either wholly or partially state-owned, hold shaky loan portfolios characterized by very high exposure (about one-third of total bank credit) to the government and the phosphates and cotton parastatals. While the government, in order to comply with an IMF Staff-Monitored Program, paid back arrears to the cotton sector in 2007, other domestic payment arrears remain a constraint. In these circumstances, commercial banks have been hampered in financing renewed economic expansion. A bank-restructuring program designed in coordination with the World Bank is defining recapitalization needs and investigating possible sales of government-held shares to private investors. Togo's monetary policy is managed by the Central Bank of West African States (BCEAO), which also keeps the accounts of the member states treasuries.

POLITICAL VIOLENCE

¶22. The most significant issue affecting Togo's commercial climate during the past decade and a half has been the political instability, division, and unrest that have characterized the country's uneven democratic transition. The instability affected economic and political activity within Togo as well as the nation's relations with the international community. Until the legislative elections of October 2007, national elections throughout this period were marked by turmoil and violence. Although anti-foreigner sentiment intensified during periods of civil unrest, Americans have never been specific targets of violence.

¶23. Togo is a republic headed by President Faure Gnassingbe, son of the late General Gnassingbe Eyadema. Eyadema was president from 1967, when he assumed power in a military coup, until his death in early 2005. Eyadema and his political party, with the strong backing of the armed forces, dominated politics and maintained control over all levels of the country's highly centralized government. Eyadema's death in 2005 triggered a new wave of unrest that resulted in many deaths and the further division of Togolese society. Controversial presidential elections in April 2005 brought Faure to power. Since his accession, Faure has based his leadership on ending Togo's long political crisis and isolation from the donor community by engaging the opposition in a wide-reaching political reform process.

¶24. The "22 Commitments" agreed by the Government of Togo and the European Union in mid-2004 have helped to provide a framework for efforts to end Togo's long political impasse. One of the commitments called for a national dialogue involving all major political actors. This dialogue began in April 2006 and produced a road map for further reforms, including the appointment of a national unity government whose primary task would be the organization of free and fair legislative elections. The legislative elections were held on October 14, 2007. Although there were some irregularities, they were declared free and fair by the EU, the Africa Union, ECOWAS, and other international and domestic observers. As a result of the successful conduct of these elections, the international community has re-engaged with the country.

CORRUPTION

¶25. Although Togo has laws on the books that make corruption a crime, it has spread as a business practice in recent years. Government procurement contracts and dispute settlements are more likely to go forward after palms are greased. Giving a bribe, whether to private or government officials, is considered a crime but is often expected. The police, gendarmes, and courts are charged with combating corruption in Togo. Some Togolese officials have been charged and convicted of corruption-related charges, but these cases are relatively rare and appear to involve mostly those who have in some way lost official favor.

BILATERAL INVESTMENT AGREEMENTS

¶26. The United States and Togo signed a warranty of private investments and amity and economic relations treaty in 1962, the Togo Amity and Economic Relations Agreement. The Togolese government has, in the past, expressed an interest in a bilateral investment treaty with the United States government, but negotiations started in 1991 were never concluded. Togo has signed many economic,

commercial, cooperation, and cultural agreements with its foreign aid donor countries, including France, Germany, Canada, the Netherlands, Belgium, Japan, and more recently with China, India, Iran, and Saudi Arabia.

OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

¶27. OPIC once played an active role in promoting foreign investment in Togo and has recently started to again play a role with its provision of political risk insurance for a natural gas project. It co-sponsored (with USAID) the visit of 15 potential investors to Togo in 1990, and it helped establish the Togolese investment promotion center and free trade zone. The French government agency COFACE provides investment insurance in Togo under programs similar to those offered by OPIC. Investment insurance is also available through the Multilateral Investment Guarantee Agency (MIGA). Insurance mechanisms involving a government guarantee of debt may carry implications for Togo's commitments to international financial institutions.

LABOR

¶28. Togo has a small pool of qualified university graduates and a sizeable population of unskilled workers, although there are shortages of workers with intermediate technical skills and practical experience. Generally, unemployment and underemployment are high, and young Togolese trying to enter the formal sector job market have difficulty finding work. The adult literacy rate is about 57 percent. Most Togolese speak French (the official language). Few people speak English, though many have a rudimentary knowledge.

¶29. The minimum wage is FCFA 28,000 (approx. \$62) a month for unskilled industrial workers. There are separate wage scales negotiated by employers, workers, and the government for industry, construction, public works, commerce, and banking. Non-wage costs (e.g., social security and medical costs) run about 40 percent of wages. Togo was unique among the CFA countries in not introducing a general wage increase after the CFA devaluation in 1994. Private sector employers generally follow government wage movements.

¶30. After a period of vigorous labor activity in the early 1990's, mostly in support of the stillborn democratic political transition and capped off by a nine-month general strike in 1992-93, labor union activity has been muted. Strikes have not been common in Togo. Several of the independent confederations banded together to form a syndicate to negotiate more effectively with the government and business management in the wake of the CFA devaluation. They have not been notably successful. However, for the first time in over fifteen years, unions negotiated a settlement with the government at the end of November 2006. A threatened 24-hour strike was called off after the government agreed to meet union demands. The government has since fulfilled all commitments made in the agreement, including a five percent salary increase to government workers and payment of salary arrears. In January, health workers went on strike to protest work conditions; the minister of health promised to meet their conditions. However, nothing was done, and the health workers went on strike again in September. In July, 9 phosphate workers were fired after going on strike for five and a half hours.

FOREIGN TRADES ZONES/FREE TRADE ZONES

¶31. Togo has had a free port for many years. It serves as a transshipment facility for goods passing through the port of Lome to neighboring countries.

¶32. In 1989, the Togolese government approved an export processing zone (EPZ) law. Advantages of the EPZ include a less restrictive labor code and the authorization to hold foreign currency-denominated accounts. The law requires EPZ firms to employ Togolese on a priority basis, and after five years foreign workers cannot account for more than 20 percent of the total workforce or of any professional category. EPZ firms may, with government permission, sell not more than 20 percent of their production in Togo. While there are two physical EPZ sites, investors may locate outside of these areas and still enjoy EPZ status. Approximately 58 firms are operating in the EPZ as of January 2009, with an

additional 30 preparing to open.. However, severe electricity shortages in Togo continually cause great difficulty for manufacture-oriented companies in the zone. The destruction of bridges by flooding during the rainy season in 2008 made some firms shut down temporarily due to an inability to move their goods.

FOREIGN DIRECT INVESTMENT STATISTICS

133. Major foreign investors:

United States

Contour Global: Constructing a 100-megawatt power plant in Lome. Signed a \$146 million non-recourse financing agreement with OPIC. There are also a few individual U.S. citizens operating small businesses in sectors such as import-export and retailing.

France

AGS Togo- Frasers International: French-owned international moving and storage company.

Air France: Subsidiary of French airline.

Air Liquide: majority French-owned medical gas company.

Allo Hygiene: majority French-owned cleaning company.

Assurances Generales du Togo (AGF): French-owned insurance company.

Cica Togo: Distributor of Toyota and Mazda vehicles. Also involved in household equipment and general trading. Working capital CFA 1.2 billion, investment CFA 145 million. Owned 70 percent by the French Group Pinaut.

CFAO Togo: French-owned commercial company.

Groupement d'Entreprises de Transports Maritimes et Aeriens (GETMA): French-owned maritime and air transportation agency.

Mercure Hotel Sarakawa and Ibis Hotel Lome: The French Group Accor took over and renovated Hotel Sarakawa, now known as the Hotel Mercure-Sarakawa and Hotel Le Benin, now known as Ibis Hotel Lome Centre.

Nouvelle Industrie des Oleagineux du Togo (NIOTO): Manufacturer of edible oils (primarily cottonseed oil). The company bought two former government-owned oil plants under the privatization program. NIOTO's initial capital of CFA 1 billion was owned principally by the French company CFTD (Compagnie Francaise pour le Developpement des Fibres Textiles).

Societe Togolaise de Produits Marins S.A. (STPM S.A.): Majority French-owned seafood processor/exporter that sells fish, shrimp, and lobster. Investment of CFA 430 million.

Satom-Togo: Public works/construction company. Capital CFA 5 million. Subsidiary of French company Satom.

Societe Togolaise de Boissons (STB): Soft drink distributor. Previously a parastatal venture with German participation, the French group Castel bought controlling shares in both STB and the Brasseries du Benin (BB), the beer brewery and soft drink processor, under the privatization program.

Societe Togolaise des Gaz Industriels (Togogaz): Fabrication and sale of industrial and medical gasses and equipment. Capital CFA 1.1 billion. Owned 60 percent by the French company Air Liquide, but the government's shares are sold on the Abidjan stock exchange.

Togocrus Sarl: French-owned processor/exporter of seafood. Investment of CFA 545 million.

UAC Togo: Import-export company. Capital CFA 853.2 million, owned 78 percent by French company UAC.

Udecto: Construction and public works. Capital CFA 160 million. Owned 73 percent by French company Campenon Benard.

Total Togo: Petroleum products distribution. Capital CFA 511 million. Has 45 service stations in Togo and about 47 percent of the market. Total took over Mobil Oil's retail distribution in Togo in 2006 (29 service stations, about a 30 percent market share, capital of CFA 376 million).

Germany

BENA Development/Marox: Agriculture and livestock raising, delicatessen, restaurant. German family-owned business. Capital CFA 200 million.

Hoechst Togo: Chemical and agricultural product sales. Company is 75 percent owned by Hoechst AG, Germany. Capital CFA 5 million.

Denmark

Fanmilk: The Danish dairy company Emedan has a long-term lease on the former government-owned dairy products company as part of the privatization program.

Industrie Togolaise des Plastiques (ITP): Joint investment by the Danish company FMO, the Danish development agency IFU, and the Dutch

company Wavin. Total capital of new company CFA 735 million.
Atlantic Produce: Exporter of tropical houseplants. Investment of CFA 260 million.

Norway/Germany

Societe des Ciments du Togo (Cimtogo): Cement production company. Previously 50 percent owned by the Scandinavian company Scancem, Cimtogo bought out the government's shares in 1996. Scancem was recently purchased by a German multinational, but continues to operate locally under Norwegian management.

Ethiopia

ITT Co. Sarl: Majority Ethiopian-owned manufacturer of automotive seat covers and shoes. Investment of CFA 103 million.

South Korea

Amina Togo S.A.: Producer of synthetic hair. Investment of CFA 342 million.

Sofina Sarl: Manufacturer of fishing nets and ropes. Investment of CFA 13 million.

Nina: Producer of synthetic hair. Investment of CFA 115 million.

India

Boncomm International Togo: Indian-owned clothing manufacturer.

Exports to Europe and USA.

Ramco: The largest and most profitable chain of supermarkets and electronic stores.

Wacem (West Africa cement company): Originally developed as a joint Togolese-Ivoirian-Ghanaian cement production venture, the factory floundered due to management dissention and losses on Cedi-denominated sales in Ghana. An Indian firm has resurrected the company, which produces clinker (limestone) for Cimtogo and is beginning to manufacture and market cement itself.

Belgium

Umco Sarl: Belgian-owned manufacturer of leather watchbands and other leather goods. Investment of CFA 32 million.

United Kingdom

Garage Hellel: BMW dealer. Also local representative for Jeep vehicles.

Shell Togo: Owned by British subsidiary of Royal Dutch Shell.

Armenia

Societe Generale des Grands Moulins du Togo (SGMT): The only flour mill in Togo. Capital CFA 1.1 billion. The company became Armenian in 1997.

Hawkins